United Nations A/C.5/57/36

General Assembly

Distr.: General
12 March 2003

Original: English

Fifty-seventh session
Fifth Committee
Agenda item 112
Programme budget for the biennium 2002-2003

Conditions of service and compensation for officials other than Secretariat officials

Members of the International Court of Justice

Judges of the International Tribunal for the Former Yugoslavia

Judges of the International Tribunal for Rwanda

Report of the Secretary-General

Summary

The present report is submitted to the General Assembly to draw its attention to the issue resulting from the fact that, under the pension scheme regulations applicable to the judges of the International Court of Justice, the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, there is no provision that would bar payment of a retirement pension to judges who have previously served in any one of those organs while serving as judges of another of those organs. The report also contains a proposal for formal consideration and approval by the General Assembly to address the situation.

03-27883 (E) 140303

I. Introduction

1. The Secretary-General is responsible for undertaking periodic reviews of the conditions of service of the members of the International Court of Justice (ICJ), the judges of the International Tribunal for the Former Yugoslavia (ICTY) and the judges of the International Tribunal for Rwanda (ICTR). The last comprehensive review of the conditions of service and emoluments of the members of ICJ, the judges of ICTY, the judges of ICTR and the ad litem judges of ICTY was undertaken in 2001 and a report (A/C.5/56/14) was submitted thereon to the General Assembly at its fifty-sixth session. In paragraph 2 of its resolution 56/285 of 27 June 2002, the General Assembly decided that the conditions of service and remuneration for the members of the International Court of Justice, the judges of the International Tribunal for the Former Yugoslavia, the judges of the International Tribunal for Rwanda and the ad litem judges of the International Tribunal for the Former Yugoslavia should next be reviewed at the fifty-ninth session of the Assembly.

2. It should be recalled that the conditions of service for both Tribunals (ICTY and ICTR) have been drawn from the prevailing conditions of ICJ, as approved by the General Assembly. With regard to ICTY, particular attention is drawn to Security Council resolution 827 (1993) of 25 May 1993, and to article 13, paragraph 4, of the Statute of ICTY, as originally adopted, which specifies that "the judges shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election". As concerns ICTR, it is recalled that the Security Council established the Tribunal, by its resolution 955 (1994) of 8 November 1994, and also approved its Statute. Article 12, paragraph 5, of the Statute of ICTR, as originally adopted, specifies that "the judges of the Trial Chambers shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election".

3. Initially, the possibility of a judge completing his or her term at ICJ or a Tribunal and subsequently being appointed as a judge to a Tribunal or ICJ had not been considered. Accordingly, the issue had not been included in the review of the retirement benefits for the members of ICJ, the judges of ICTY and the judges of ICTR, nor was it raised as an issue before or by the General Assembly for revision.

4. However, it is recalled that the General Assembly, by its resolution 55/249 of 12 April 2001, in considering the conditions of service for the ad litem judges of ICTY, approved specific provisions that would exclude the payment of a pension from ICJ, ICTY or ICTR to a judge subsequently serving as an ad litem judge of ICTY (see A/55/806, para. 13, and resolution 55/249). The General Assembly, by its resolution 57/289 of 20 December 2002, in considering the conditions of service for the ad litem judges of ICTR, also approved specific provisions that would exclude the payment of a pension from ICTY, ICTR or ICJ to a judge subsequently serving as an ad litem judge of ICTR (see A/57/587, para. 29, and resolution 57/289).

II. Review of the pension scheme regulations of the International Court of Justice, the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda

International Court of Justice

5. The Pension Scheme Regulations for members of the International Court of Justice adopted by the General Assembly in its resolution 38/239 of 20 December 1983 and section VIII of its resolution 53/214 of 18 December 1998 and applicable as from 1 January 1999, provide a retirement pension to a member of the Court under the following conditions.

6. In accordance with article 1, paragraph 1, of the Regulations, a member of the Court who has ceased to hold office and who has reached the age of 60 shall be entitled, during the remainder of his or her life, to receive a retirement pension under those Regulations. Article 1 further stipulates that no retirement pension shall be payable to a former member of the Court who has been re-elected to office until he or she again ceases to hold office. In that event, no payments shall be made to him or her during the period that he or she is once more a member of the Court. His or her entitlement to receive a retirement pension under the Regulations revives immediately that he or she ceases once more to be a member of the Court.

7. There is, however, no provision in the Pension Scheme Regulations for members of the International Court of Justice to bar payment of a retirement pension under those Regulations to a former member of the Court in the event that he or she is elected or appointed a judge either of the International Tribunal for the Former Yugoslavia or of the International Tribunal for Rwanda.

International Tribunal for the Former Yugoslavia/ International Tribunal for Rwanda

8. The same situation as described in paragraphs 5 to 7 applies, mutatis mutandis, under the Pension Scheme Regulations for judges of the International Tribunal for the Former Yugoslavia and the Pension Scheme Regulations for the judges of the International Tribunal for Rwanda with respect to a judge who was at one time a judge of ICTY or ICTR, who has ceased to be a judge of either Tribunal and who has subsequently become a judge of the International Court of Justice; and to a judge who was at one time a judge of the International Tribunal for the Former Yugoslavia, has ceased to be a judge of the International Tribunal for the Former Yugoslavia and has subsequently become a judge of the International Tribunal for Rwanda (or vice versa).

9. As mentioned above, in 2001, during the consideration of the terms and conditions of service of ad litem judges of ICTY, specific consideration was given to the possibility that a person who was formerly a judge of the Court or of one of the Tribunals might subsequently be appointed to serve in ICTY as an ad litem judge of that Tribunal. This was done because, when the judges of ICTY had first proposed to the Security Council the creation of a pool of ad litem judges in that Tribunal, they had specifically envisaged that former judges of ICTY and ICTR would

probably become members of that pool and serve in the Tribunal (see A/55/382-S/2000/865, annex I, para. 116, *in fine*).

10. In his report to the General Assembly at its fifty-fifth session, the Secretary-General proposed (A/55/756, para. 21), and the Advisory Committee on Administrative and Budgetary Questions recommended (A/55/806, para. 13), that a person who was formerly a judge of the International Court of Justice or of the International Tribunal for the Former Yugoslavia or of the International Tribunal for Rwanda should cease to receive payment of the retirement pension to which he or she was otherwise entitled under the applicable set of pension scheme regulations during the time that he or she was appointed to serve in ICTY as an ad litem judge. The General Assembly, in paragraph 1 of its resolution 55/249, endorsed the recommendation of the Advisory Committee.

11. In his report on the conditions of service for the ad litem judges of the International Tribunal for Rwanda to the General Assembly at its fifty-seventh session, the Secretary-General proposed (A/57/587, para. 29), and the Advisory Committee recommended (A/57/593 para. 23), that a person who was formerly a judge of the International Tribunal for the Former Yugoslavia, the International Tribunal for Rwanda or the International Court of Justice should cease to receive payment of the retirement pension to which he or she was otherwise entitled under the applicable set of pension scheme regulations during the time that he or she was appointed to serve in the International Tribunal for Rwanda as an ad litem judge. The General Assembly, in paragraph 1 of its resolution 57/289, endorsed the recommendation of the Advisory Committee.

12. In view of these previous decisions, the Secretary-General believes that the General Assembly may wish to decide that a person who was formerly a judge either of the International Court of Justice or of the International Tribunal for the Former Yugoslavia or of the International Tribunal for Rwanda should also cease to receive payment of his or her retirement pension under the applicable set of pension scheme regulations during such time as he or she might subsequently serve as a judge of another of those organs.

III. Recent developments — International Criminal Court

13. There is a further issue which has recently arisen regarding the pensions of judges of the International Court of Justice, the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda which should be drawn to the attention of the General Assembly, in view of the recent election of two permanent judges of ICTY and ICTR to the new International Criminal Court. A judge may complete a period of service at the International Court of Justice or at one or other of the two International Tribunals. That judge might then be elected a judge of the International Criminal Court. As matters stand, there is no provision in the pension scheme regulations for members of ICJ and the judges of the two Tribunals that might operate to bar payment of a retirement pension under those regulations to the judge concerned. The General Assembly may wish to consider whether it would be appropriate to introduce any such bar and, if so, the circumstances in which it should apply.

IV. Conclusions and recommendations

14. **Should the General Assembly decide that a person who was formerly a judge either of the International Court of Justice or of the International Tribunal for the Former Yugoslavia or of the International Tribunal for Rwanda should also cease to receive payment of his or her retirement pension under the applicable set of pension scheme regulations during such time as he or she might subsequently serve as a judge of another of those organs, the Secretary-General proposes that the respective pension scheme regulations of the International Court of Justice, the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, be amended to implement such a decision.**

15. **The proposed amendments to article 1 of the respective pension scheme regulations of the International Court of Justice, the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, are set out in bold text in the annexes to the present report. Those suggested amendments have been designed to reflect the earlier decisions of the General Assembly with regard to former members of the Court and former judges of the Tribunals who might be appointed to serve in the International Tribunal for the Former Yugoslavia as ad litem judges or in the International Tribunal for Rwanda as ad litem judges. The three sets of pension regulations have been revised to implement these decisions as well.**

Annex I

Pension Scheme Regulations for Members of the International Court of Justice (based on the provisions of General Assembly resolution 38/239 of 20 December 1983 and section VIII of resolution 55/214 of 18 December 1998 and applicable as from 1 January 1999)

Article 1
Retirement pension

1. A member of the International Court of Justice who has ceased to hold office and who has reached the age of 60 shall be entitled during the remainder of his or her life, subject to paragraphs 6 **and** 7 below, to a retirement pension, payable monthly, provided that he or she has:

(a) Completed at least three years of service;

(b) Not been required to relinquish his or her appointment under Article 18 of the Statute of the Court for reasons other than the state of his or her health.

2. For a member who has served a full term of nine years, the annual pension entitlement shall be:

- For the year 1999, US$ 60,000;
- For the year 2000, US$ 70,000;
- With effect from 1 January 2001, one half the annual salary.

3. A member serving in office as of 31 December 1998, who has been or is re-elected, shall be entitled to an increase in the amount of the pension by one three hundredth of the amount payable under paragraph 2 for each month of service in excess of nine years, provided that maximum retirement pension shall not exceed two thirds of his or her annual salary:

- For the year 1999, a maximum of US$ 81,600;
- For the year 2000, a maximum of US$ 95,200;
- For the year 2001, two thirds of annual salary, US$ 106,667.

4. A member who has served for less than a full term of nine years shall be entitled to a retirement pension in the amount of that proportion of one half of the annual salary which the number of months of his or her actual service bears to 108.

5. A member who ceases to hold office before the age of 60 and who would be entitled to a retirement pension when he or she reached that age may elect to receive a pension from any date after the date on which he or she ceases to hold office. Should he or she so elect, an actuarial reduction factor of one half of one per cent per month should be applied on the retirement pension which would have been paid to him or her at the age of 60.

6. No retirement pension shall be payable to a former member who has been re-elected to office until he or she again ceases to hold office. At that time, the amount of his or her pension shall be calculated in accordance with paragraphs 2 to 4 above on the basis of his or her total period of service and shall be subject to a reduction

equal in actuarial value to the amount of any retirement pension paid to him or her before he or she reached the age of 60.

7. **No retirement pension shall be payable to a former member who has been elected or appointed a permanent judge of the International Tribunal for the Former Yugoslavia or the International Tribunal for Rwanda or who has been appointed to serve in the International Tribunal for the Former Yugoslavia or the International Tribunal for Rwanda as an ad litem judge until he or she ceases to hold that office or appointment.**

Annex II

Pension Scheme Regulations for judges of the International Tribunal for the Former Yugoslavia (based on the provisions of section VIII of General Assembly resolution 53/214 of 18 December 1998 and applicable as from 1 January 1999)

Article 1
Retirement pension

1. A judge of the International Tribunal for the Former Yugoslavia who has ceased to hold office and who has reached the age of 60 shall be entitled during the remainder of his or her life, subject to paragraphs 4 **and 5** below, to a retirement pension, payable monthly, provided that he or she has:

(a) Completed at least three years of service;

(b) Not been required to relinquish his or her appointment under Article 18 of the Statute of the Court for reasons other than the state of his or her health.

2. The amount of the retirement pension shall be determined as follows:

(a) If the judge has served a full term of four years and ceases to hold office after 1 January 2001, the amount of the annual pension shall be two ninths (2/9) of the annual salary;

(b) If the judge has served a full term of four years and ceases to hold office after 1 January 1999, but before 1 January 2000, the amount of the annual pension shall be US$ 26,500;

(c) If the judge has served a full term of four years and ceases to hold office after 1 January 2000, but before 1 January 2001, the amount of the annual pension shall be US$ 31,000;

(d) Judges who have served a term of four years and who retire in 1999 or 2000 shall receive an increase in their pension, as follows: As noted above, judges retiring in 1999 shall receive an annual pension of US$ 26,500. Their annual pension shall be increased to US$ 31,000 in 2000 and to US$ 35,500 in 2001. Judges retiring in 2000 shall receive an annual pension of US$ 31,000. The pension shall be increased to US$ 35,500 in 2001;

(e) With effect from 1 January 1999, all pensions in course of payment as at 31 December 1998, including pensions of judges who retire on or before that date, shall be increased by 10.3 per cent, i.e., the change resulting from the increase in the annual salary;

(f) If a judge served for less than a full term of four years, the amount of the pension shall be that proportion of the annual pension which the number of months of his or her actual service bears to 48;

(g) If the judge came into office prior to 1 January 1999 and has been or is subsequently re-elected for another term, he or she shall continue to receive 1/133rd of the International Tribunal's pension benefit for each further month subsequent to his or her initial term, up to a maximum pension equivalent to 8/27th of the annual

salary. Judges elected to terms of office commencing after 31 December 1998 shall not be entitled to an increase in their pension benefit in case of re-election.

3. A judge who ceased to hold office before the age of 60 and who would be entitled to a retirement pension when he or she reached that age may elect to receive a pension from any date after the date on which he or she ceases to hold office. Should he or she so elect, the amount of such pension shall be that amount which has the same value as the retirement pension which would have been paid to him or her at the age of 60.

4. No retirement pension shall be payable to a former judge who has been re-elected to office until he or she again ceases to hold office. At that time, the amount of his or her pension shall be calculated in accordance with paragraph 2 above on the basis of his or her total period of service and shall be subject to a reduction equal in actuarial value to the amount of any retirement pension paid to him or her before he or she reached the age of 60.

5. **No retirement pension shall be payable to a former judge who has been elected a member of the International Court of Justice or who has been elected or appointed a permanent judge of the International Tribunal for Rwanda or who has been appointed to serve in the International Tribunal for the Former Yugoslavia or the International Tribunal for Rwanda as an ad litem judge until he or she ceases to hold that office or appointment.**

Annex III

Pension Scheme Regulations for judges of the International Tribunal for Rwanda (based on the provisions of section VIII of General Assembly resolution 53/214 of 18 December 1998 and applicable as from 1 January 1999)

Article 1
Retirement pension

1. A judge of the International Tribunal for the Former Yugoslavia who has ceased to hold office and who has reached the age of 60 shall be entitled during the remainder of his or her life, subject to paragraphs 4 **and 5** below, to a retirement pension, payable monthly, provided that he or she has:

(a) Completed at least three years of service;

(b) Not been required to relinquish his or her appointment under Article 18 of the Statute of the Court for reasons other than the state of his or her health.

2. The amount of the retirement pension shall be determined as follows:

(a) If the judge has served a full term of four years and ceases to hold office after 1 January 2001, the amount of the annual pension shall be two ninths (2/9) of the annual salary;

(b) If the judge has served a full term of four years and ceases to hold office after 1 January 1999, but before 1 January 2000, the amount of the annual pension shall be US$ 26,500;

(c) If the judge has served a full term of four years and ceases to hold office after 1 January 2000, but before 1 January 2001, the amount of the annual pension shall be US$ 31,000;

(d) Judges who have served a term of four years and who retire in 1999 or 2000 shall receive an increase in their pension, as follows: As noted above, judges retiring in 1999 shall receive an annual pension of US$ 26,500. Their annual pension shall be increased to US$ 31,000 in 2000 and to US$ 35,500 in 2001. Judges retiring in 2000 shall receive an annual pension of US$ 31,000. The pension shall be increased to US$ 35,500 in 2001;

(e) With effect from 1 January 1999, all pensions in course of payment as at 31 December 1998, including pensions of judges who retire on or before that date, shall be increased by 10.3 per cent, i.e., the change resulting from the increase in the annual salary;

(f) If a judge served for less than a full term of four years, the amount of the pension shall be that proportion of the annual pension which the number of months of his or her actual service bears to 48;

(g) If the judge came into office prior to 1 January 1999 and has been or is subsequently re-elected for another term, he or she shall continue to receive 1/133rd of the International Tribunal's pension benefit for each further month subsequent to his or her initial term, up to a maximum pension equivalent to 8/27th of the annual

salary. Judges elected to terms of office commencing after 31 December 1998 shall not be entitled to an increase in their pension benefit in case of re-election.

3. A judge who ceased to hold office before the age of 60 and who would be entitled to a retirement pension when he or she reached that age may elect to receive a pension from any date after the date on which he or she ceases to hold office. Should he or she so elect, the amount of such pension shall be that amount which has the same value as the retirement pension which would have been paid to him or her at the age of 60.

4. No retirement pension shall be payable to a former judge who has been re-elected to office until he or she again ceases to hold office. At that time, the amount of his or her pension shall be calculated in accordance with paragraph 2 above on the basis of his or her total period of service and shall be subject to a reduction equal in actuarial value to the amount of any retirement pension paid to him or her before he or she reached the age of 60.

5. **No retirement pension shall be payable to a former judge who has been elected a member of the International Court of Justice or who has been elected or appointed a permanent judge of the International Tribunal for the Former Yugoslavia or who has been appointed to serve in the International Tribunal for the Former Yugoslavia or the International Tribunal for Rwanda as an ad litem judge until he or she ceases to hold that office or appointment.**